89-438 (2)

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1989

GREG'S HESS STATION, INC., a New Jersey Corporation,

Petitioner,

vs.

THE STATE OF NEW JERSEY, by the COMMISSIONER OF TRANSPORTATION,

Respondent.

BRIEF ON BEHALF OF AMERADA HESS CORPORATION AND HESS REALTY CORPORATION IN RESPONSE TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION

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RULE 28.1 LIST

Respondents Amerada Hess Corporation and Hess Realty Corporation were parties to the proceedings below. Although the Petition for a Writ of Certiorari does not name these respondents as parties before this Court, these respondents have an interest in the Petition and accordingly have filed a notice of such interest with this Court and all other parties pursuant to R. 19.6 of the Supreme Court Rules.

AMERADA HESS CORPORATION

LIST OF SUBSIDIARIES AND AFFILIATED COMPANIES
(Other than wholly-owned)

SUBSIDIARIES

Minas y Petroleos Del Ecuador
Petroleos Yasuni, C.A.
Amerada Hess El Qa Corporation
AH 1980 Program, Inc.
St. Lucia Road Contractors
Ariadne Co., L.P.

AFFILIATED COMPANIES

Wyatt, Inc.
Meadville Corporation
Lubexpress Operating Company, Inc.
Lubexpress Land Company, Inc.
Lubexpress Development Company, Inc.
Oasis Oil Company of Libya, Inc.
Matco Tankers (U.K.) Ltd.
Pict Petroleum P/C
Anglomar Shipping Company Ltd.

First United Shipping Corp.
Second United Shipping Corp.
Third United Shipping Corp.
Interocean Tanker Corp.
Granreunion Co.
Atlas Marine Co.
Artemis Marine Co. L.P.
St. Croix Petrochemical Corp.
Conmar Terminals, Ltd.
South Jersey Terminal Corp.

Amerada Hess Corporation has no parent company.

HESS REALTY CORPORATION

Hess Realty Corporation's parent company is Amerada Hess Corporation.

Hess Realty Corporation has no subsidiaries or affiliates.

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APPENDIX

Appendix A — Certification of Gregory Forte..... 1a

No.

In The

Supreme Court of the United States

October Term, 1989

GREG'S HESS STATION, INC., a New Jersey Corporation,

Petitioner,

vs.

THE STATE OF NEW JERSEY, by the COMMISSIONER OF TRANSPORTATION,

Respondent.

On Petition for a Writ of Certiorari to the Superior Court of New Jersey, Appellate Division

BRIEF ON BEHALF OF AMERADA HESS CORPORATION AND HESS REALTY CORPORATION

CONSTITUTIONAL PROVISIONS INVOLVED

New Jersey Constitution (1947), Article I, Paragraph 20:

> Private property shall not be taken for public use without just compensation . . . .

United States Constitution, Amendment V:

> . . . Nor shall private property be taken for public use without just compensation.

United States Constitution, Amendment XIV:

> . . . Nor shall any state deprive any person of life, liberty or property without due process of law.

STATEMENT OF THE CASE

These respondents will rely upon the Statement of the Case contained in the Petition For a Writ of Certiorari for a recitation of the general background of the case. However, respondents emphasize that the claim raised by petitioner[1] in the state courts pertaining to its alleged entitlement to compensation for the loss of its leasehold interest in the property was decided adversely to petitioner. The state courts found that petitioner had, under state law, waived any claim which it might otherwise have had to compensation for its leasehold interest in the condemned property. Thus, the only claim which petitioner can now assert is one for the loss of its business interest as a result of the state's exercise of its power of eminent domain, and not a claim for the loss of any real property interest.

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1. Neither Amerada Hess Corporation nor Hess Realty Corporation has ever had any relationship with petitioner. All dealings were with Gregory Forte, individually.

ARGUMENT

Respondents Amerada Hess Corporation (hereinafter "Amerada Hess") and Hess Realty Corporation (hereinafter "Hess Realty") submit this Brief in Response to the Petition for a Writ of Certiorari which has been filed on behalf of petitioner, Greg's Hess Station, Inc. (hereinafter "petitioner"). Although not directly named as parties by petitioner, these respondents have filed a notice of interest in accordance with Rule 19.6 of the Supreme Court Rules and are filing this brief in order to protect the condemnation award which Hess Realty is entitled to receive as a result of the condemnation of its property by the State of New Jersey, Department of Transportation (hereinafter "the State").

During the proceedings conducted in the state courts, both the State and petitioner contended, among other things, that, in the event petitioner's business loss is held to be a compensable property interest, petitioner would be entitled to a portion of the condemnation award which was granted to Hess Realty. Although this argument has not been re-asserted by petitioner in its petition before this Court, it is possible that the State may raise it in its responding brief. For this reason, these respondents are constrained to apprise this Court of their position with respect to this issue.[2]

In the courts below, the State argued that under the unit valuation rule in effect in New Jersey, *see State v. New Jersey Zinc Co.*, 40 N.J. 560, 574 (1963), the State need only make a single award to the fee owner of the property being condemned (in this case Hess Realty), and that all subsidiary property interests,

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2. Hess Realty and Amerada Hess take no position at this time on the question of whether the Fifth and Fourteenth Amendments to the United States Constitution should be interpreted as requiring separate compensation to petitioner for the "destruction" of its business.

including the value of petitioner's business, would have to be satisfied out of that award. The fallacy in this argument, of course, is that petitioner's business is not a subsidiary property interest to Hess Realty's fee such as an easement would be but is a separate entity in and of itself having a value completely separate from the value of the real estate.

Furthermore, in the courts below, the State argued that, if an award is to be made to petitioner, it should come out of Hess Realty's award because Amerada Hess allegedly received consideration for the franchise when it was issued and is able to re-market the franchise. This argument, too, is fallacious for two reasons. First, the assumption inherent in the argument is that Amerada Hess received consideration from petitioner, or its predecessor, for the franchise. This assumption is unfounded. The record below indicates only that petitioner paid its predecessor in interest when it purchased the franchise (2a, ¶ 3). There is no evidence that Hess received any payment when it issued the franchise and, in fact, it received none. Second, even if Amerada Hess had received payment for the franchise, it does not diminish the State's obligation to fully compensate Hess Realty for the property it has condemned.

Consistent with the provisions of the New Jersey condemnation statutes (N.J.S.A. 20:3-1, *et seq.*) and the existing interpretation of them by the New Jersey courts, Hess Realty will receive compensation for the value of the land and improvements taken from it, *only*. The condemnation award to it will not include any compensation for the value of the petitioner's business.[3] Thus, when it receives its award, Hess Realty will obtain nothing that might be rightfully construed as representing the value of

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3. Consistent with New Jersey law, none of the property appraisals considered the value of petitioner's business in arriving at the fair market value of the property being taken.

petitioner's business. Thus, there is no rationale for transferring to petitioner a portion of Hess Realty's award under either a unit valuation rule or because Amerada Hess allegedly received consideration for the franchise.

Were this Court to carve out a portion of Hess Realty's award and bestow it upon petitioner as compensation for the loss of its business, the award which Hess Realty would receive would amount to less than that to which it is constitutionally entitled. Both the New Jersey Constitution (1947), Article I, Paragraph 20, and the United States Constitution, Fifth Amendment and Fourteenth Amendments, entitle Hess Realty to be paid just and full compensation for the taking of its private property. *See, e.g., Pennsylvania Coal Co. v. Mahon,* 260 U.S. 393 (1922). Were this Court to permit petitioner to share in the award to Hess Realty, which award is based on the value of the land and improvements only, this Court would be awarding Hess Realty Corporation less than just and full compensation for the land and buildings taken from it. Such a result would itself violate the taking clauses of the United States and New Jersey Constitutions by depriving Hess Realty of its property without just compensation.

In sum, if this Court ultimately concludes that petitioner is to be compensated for its loss of business, a separate valuation of petitioner's business interest should be conducted, with a separate award provided by the State to petitioner. Petitioner's recovery, however, should not come out of the award to Hess Realty.

CONCLUSION

For the foregoing reasons, in the event that this Court grants the Petition for a Writ of Certiorari, this Court is respectfully urged to find that any award to which petitioner might be entitled should not be extracted from the award which has been granted to Hess Realty, but rather is a separately compensable interest which must be separately paid by the State.

Respectfully submitted,

MARVIN J. BRAUTH
Counsel of Record

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Amerada Hess Corporation and
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Dated: September 22, 1989

APPENDIX A — CERTIFICATION OF GREGORY FORTE

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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MORRIS COUNTY
DOCKET NO. L-29215-86

Civil Action

STATE OF NEW JERSEY, by the COMMISSIONER OF TRANSPORTATION,

Plaintiff,

HESS REALTY CORPORATION, *et al.*,

Defendants,

and

GREG'S HESS STATION, INC., a New Jersey corporation,

Third-Party Plaintiff,

vs.

AMERANDA HESS CORPORATION, a Delaware corporation,

Third-Party Defendant.

Appendix A

I, GREGORY FORTE, by way of certification is lieu of affidavit, say:

1. I am the president and sole shareholder of Greg's Hess Station, Inc. ("Greg's Hess") the defendant/third-party plaintiff in the above-captioned matter, and am authorized by Greg's Hess to make this Certification in opposition to the pending motions by the State of New Jersey, and by defendant, Hess Realty Corporation, and third-party defendant, Amerada Hess Corporation, (hereinafter, collectively, "Hess Defendants") for summary judgments dismissing the counterclaim, cross-claim and third-party complaint of Greg's Hess, and in support of Greg's Hess' cross-motion for leave, *nunc pro tunc,* to assert the above-described claims.

2. I have personal knowledge of all matters set forth herein.

3. On or about January 12, 1978, I purchased from one Edward Schmidt, with the knowledge and consent of Amerada Hess Corporation, the "franchise" to operate Hess Gasoline Station No. 30241, on Route 23 North, in Riverdale, New Jersey. The purchase price paid to Edward Schmidt was $35,000.00. Inventory transferred in connection with the purchase of the franchise was the subject of a separate closing adjustment.

4. On or about the date of the above-described purchase, Amerada Hess Corporation tendered a Dealer Agreement (Dealer Lease and Dealer Franchise and Sales Agreement), which agreement was dated January 12, 1978 and was signed by me. A revised form of Dealer Agreement was subsequently tendered and signed, on or about August 25, 1981.

5. Greg's Hess was incorporated, under the laws of New

Jersey, on March 13, 1978. After that date, with the knowledge and acquiescence of the Hess Defendants, Hess Gasoline Station No. 30241 was operated in close corporate form continuously, until the premises were taken by the State, on July 14, 1986.

6. From and after March 13, 1978, all payments for purchases of petroleum products and all rental payments were made by Greg's Hess. All such payments were received and accepted by Amerada Hess Corporation without question or complaint as to the legal form in which the gasoline station franchise business was being operated.

7. From January 12, 1978 until July 14, 1986, the operation of Hess Gasoline Station No. 30241, through Greg's Hess, was my principle employment and source of livelihood.

8. To date, I have received no compensation for the loss sustained by me as a result of the State's taking of Hess Gasoline Station No. 30241 and the land upon which it was situated.

9. The State has offered a payment in lieu of moving expenses, pursuant to N.J.S.A. 27:7-75, in the amount of $6,044.50. Because of the pendency of this action, that offer has not been accepted or rejected.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.

s/ Gregory Forte
Gregory Forte

DATED: October 2, 1986
JRF19:J